# VERMONT HEALTH CARE ASSOCIATION

***Representing Quality Health Care Homes***

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Patrick Flood, Commissioner
Department of Aging and Disabilities
103 South Main Street – Osgood Building
Waterbury, VT  05671-2301

Dear Commissioner Flood:

Thank you for the opportunity to respond to the draft Demonstration Waiver Proposal to the Centers for Medicare and Medicaid Services. If granted, this waiver will significantly change long term care in Vermont by making home and community based services a Medicaid entitlement, along with nursing  home care.

Vermont Health Care Association completely supports the concept of choice among recipients of long term care services. We support and appreciate the consumers' desire to remain at home as long as safely possible.

In addition, VHCA can sincerely subscribe to the goals as defined on page five of the proposal. We see the difficulty in the details of these goals.

Quality of Care

Our concern with this proposal continues to center around the issue of quality of care and safety for the patient. As you know, Vermont nursing homes offer some of the highest quality of care in the country. We are proud of this fact and our members continue to strive for better performance, state-of-the-art clinical skills and treatments, and strict attention to the dignity and physical safety of our patients.

We feel there is one glaring omission in this proposal, and that is any reference to the safe environment needs of the home based patient. Consideration is given to home modifications and assistive devices, but no consideration has been given to fire safety requirements. It appears that many of these people will be bed-ridden or have low mobility and be alone for periods of time.

Should there be consultation with local fire marshals to ensure their safety? As you know, all nursing homes in Vermont must have sprinkler systems; fire drills and tests are mandated on a regular basis. We have all read the alarming statistics that fire-related deaths are on the rise in Vermont. It should certainly be a consideration in this proposal.

***Home environment issues are considered as part of the assessment of individuals' strengths***

***and needs, and basic home safety concerns should be addressed as part of the care plan, with the consumer's permission. The Department believes it is not appropriate to subject private homes to the type of fire safety requirements used for public facilities. Consumers would perceive this as an invasion of their privacy.***

There will be a need for more comprehensive monitoring than is presently offered under the current waiver system. Case managers are only required to see their clients every 30 days. We believe this is not sufficient oversight for medically complex and difficult behavior patients. We continue to believe that a comprehensive system must be in place that is similar to the long term care survey process. Nursing homes and, to a lesser extent, residential care homes are judged by an extensive survey and inspection process mandated by participation in the federal Medicare and Medicaid programs as well as state licensing requirements. It is unclear how the State plans to comply with Medicaid oversight regulations with the expansion to home based care. In addition, as we discussed, there must be a mechanism for enforcement with adequate penalties for substandard care.

***We agree and have stated regularly that we will increase monitoring of quality of home based services, and agree that there needs to be a mechanism for enforcement. However, it is impractical to think that an individual living in his or her own home should be subjected to a survey process similar to that required for complex long term care facilities. The new process will include more in-home face-to-face monitoring of quality. A work group is discussing what the details of this quality assurance/quality improvement process should be.***

We support the expansion of the long term care ombudsman's office to receive and investigate complaints and serve as consumer advocates for people receiving home-based care. Appropriate budgetary considerations must be incorporated to achieve this goal since the ombudsman office cannot assume this role with the present resources available to them.. This is an example of our fear that if there are any savings under this proposal, such "savings" would go to support the infrastructures needed to support the proposal.

***There will be some additional costs for a home- based ombudsman function, but the Department believes it will be modest and a very good investment.***

Costs/Financing

Based on the proposed eligibility criteria, patients in need of more complex care will be able to receive this care at home. Under the eligibility standards, people will require skilled nursing assessment, monitoring and care on a daily basis. This means daily visits and care by a licensed nurse---personal care attendants do not fit this criterion. Will the home health agencies be able to fill this need? In view of the current nursing shortage facing all providers, it does not seem likely. Administrators of home health agencies that we have spoken with are concerned about their ability to fill staffing needs and carry out the mandates of this proposal. In any event, the cost of this care will be more expensive than today's average home care cost.

***The need for skilled nursing assessment, monitoring and care on a daily basis is only one way to become eligible for the Highest Need group; there are three other criteria, each of which could make an individual eligible for this group. (See Appendix B of the final submittal.).***

***Home Health agencies have assured the Department in public settings and in their written comments, that they are fully prepared to meet the demand both for nursing and personal***

***care services.***

Although home based care appears to have lower caregiver costs than nursing homes, differences in staffing levels and ratios, staff training, and the lack of appropriate oversight may have implications on the quality of care.

***The Department believes the quality of care in the Home Based Waiver is high. Consumer satisfaction, one measure of quality, is over 90%. Over the past 10 years, DA&D has received very few reports concerning the quality of care provided.***

What type of financial accountability will be required of persons receiving home based care? Will there be a type of cost reporting in order to track actual expenditures?

***The Department will track expenditures closely. We are unclear what is meant by "financial accountability" of persons receiving care. As Medicaid eligible persons, they will be subject to Medicaid regulations. As far as the Cash and Counseling pilot is concerned, the policies and procedures for this option will describe the methodologies for care planning and tracking of expenditures. We will study the policies and procedures used by the three successful pilots in those states funded by the Robert Wood Johnson Foundation grants.***

We would like a better understanding of the cost sharing and co-payments for services as outlined on page 18. Will the proposed co pay of $50-100 per month from residents be *in addition* to the current patient share responsibility? It is sometimes difficult to collect the patient share; co-payments will place yet another collection burden and financial risk on nursing and ERC homes.

***The Department recognizes that it needs to develop the details for the cost-sharing proposal. Nursing homes and ERC facilities will not be affected. The rules pertaining to patient shares will not be changed. The cost sharing is only intended for those individuals in home-based settings who are permitted to retain up to $10,000 in assets.***

There is also some confusion about the increase in assets for home based care to $10,000. If a home care patient with allowable $10,000 in assets is admitted to a nursing home, they are required to spend down to $2,000. It is quite possible that, at a later date, this person will no longer meet the eligibility requirements and be discharged. Are you considering a trust fund arrangement to hold assets in excess of $2,000 for a set period of time?

***The Department is considering ways to permit individuals to have a short stay in a nursing home without having to spend down to the $2000 limit. This would be a similar concept to the ability people have today to have a short or temporary stay in a nursing home yet keep their house.***

As we have stated many times, the true cost of home and community based care has yet to be determined. As you know, nursing home costs are all inclusive and include, but are not limited to: housing, food, utilities, insurance, medication, therapy, staff training, housekeeping, laundry, transportation, physician and dental visits, socialization and recreation. All of these things must also be provided at home.

***All these needs must be addressed for individuals living at home. The individual or family however, provides many of these needs, with no cost to the State Medicaid program.***

In addition, research has shown that as patient needs increase, costs per patient also increase. Much of the research into the cost effectiveness of home and community based services vs. "institutionalized" services fails to take into account differences in case mix. Until this waiver, people in home based settings usually had lower care level needs. Therefore, without taking case mix into account, it is possible to over-estimate cost savings. As home based patients become more medically needy, we believe you will see that any cost differences are reduced. We firmly believe that the State has not made a comprehensive evaluation of the total costs and any reference to cost savings is inherently flawed.

***The~~re~~ needs of people on the home and community based Waiver are, overall, much greater than they were six years ago, due to the process of prioritization. This change has been reflected in increasing expenditures in the Waiver. ,If people with higher care needs choose to remain at home under the new proposal, we could see a rise in the per person costs. We believe these costs will still remain under the average cost of nursing home care primarily because the state budget will not be paying for room, board and other services.***

***Many consumers would argue that even if the cost for care were equal between care at home or in a nursing home, individuals should have the opportunity to choose between the two settings.***

If the projected cost savings do not materialize, I do not believe the legislature is in a position to make up any difference from the general fund. Both nursing home and home health provider taxes are at maximum revenue. Nursing homes now pay $3,388.25 per licensed bed in provider taxes. All but a small portion of this tax goes to fund nursing homes' staff wages and benefits, annual inflation, and cost of care. Currently $200 of the provider tax is directly funneled to home and community based services. Will this continue to be the policy or will the provider tax funds now be used to fund *all* the services in the 1115 waiver proposal? Nursing home beds will, in all probability, decline; therefore, provider tax revenue will decline. There is also the likelihood that the federal Medicaid match will decrease as it has over the past several years. We do not share your confidence that budget neutrality will be achieved, with the same or more Vermonters receiving services. Have you adequately explained to legislators the possible repercussions and challenge to the general fund?

***We do not foresee any change in the way the Provider Tax works.***

***Any reduction in the number of beds need not result in a reduction in tax revenues. An adjustment in the tax per bed could make up the difference. Any reduction in Medicaid match from the federal government is a problem under any scenario, not just for this proposal. Legislators will continue to examine the budgetary implications. Our position is that this proposal is likely to result in lower per person costs and is the only way the state can effectively manage revenues and costs. Doing nothing will surely result in higher costs which cannot be managed.***

VHCA is excited to learn that the State is willing to encourage the use of long term care insurance. We are eager to work with the State in developing ways to make long term care insurance a realistic future solution to the needs of a growing older population. I hope that the State will call upon VHCA as a partner in this endeavor.

***We will certainly include the Association in the development of this plan.***

Access

The general public has a very clear understanding and interpretation of the word "entitlement." When they discover that home based care, touted as the equivalent of nursing home "entitlement," does not actually mean the same 24 hour/seven day a week care, the department may have some difficult semantics to explain.

***We appreciate that we must distinguish between the services available in different settings. To date, this has not been a problem. Consumers seeking long-term care services through our home-and community-based waiver application process are informed of the service options and then given the opportunity to choose. This will continue to be the case in the new proposal with DA&D staff presenting all options to consumers.***

The State continues to assume that there are large numbers of people residing in nursing homes who do not meet current medical needs. Past programs such as One-to-One and Options Counseling did not result in a mass exodus from nursing homes. With the change in medical eligibility, however, it is expected that 200-300 people now in nursing homes will fall into the "high need" category and no longer be eligible for nursing home care. The draft proposal states that "all individuals currently eligible for Medicaid and in receipt of long term care services in a nursing facility…" will be part of the demonstration. Past conversation led us to believe that current residents would be grandfathered. This does not appear to be the case any longer. Will the state take the responsibility of finding placement for those residents who will no longer be "entitled" to long term care services? Will the state take the responsibility of explaining to families why residents are being discharged or no longer covered by Medicaid?

***It is very much a part of this proposal that individuals currently in a nursing home or on the home based Waiver will be "grandfathered" into this long-term care program. This is important because, as we found in the prior efforts, once someone has been admitted to a nursing home it is often very difficult to return home after a home or apartment has been given up, or care givers are no longer available. However, if the proposal is approved, the Department will continue, as it does today, to ensure that individuals remain eligible for the services. If a nursing home resident is no eligible for care in that setting, he/she will be subject to discharge planning, just as happens today.***

It appears that fewer Vermonters will have access to long term care services.

***Of course, the Department completely disagrees. One of the primary reasons for pursuing this proposal is to serve more people and offer them equal opportunity to access long-term care services in a wider variety of settings..***

VHCA appreciates the opportunity to continue to work with you on this proposal. As we have said many times, we support and encourage choice, but the quality and safe care of Vermont's frail and elderly has to take priority in any plan.

Sincerely,

Mary Shriver

Executive Director

cc: Governor James Douglas
Secretary Charles Smith
Senator James Leddy, Chair, Senate Health and Welfare Committee
Representative Thomas Koch, Chair, House Health and Welfare Committee
Senator Susan Bartlett, Chair, Senate Appropriations Committee
Representative Richard Westman, Chair, House Appropriations Committee
Senator Richard Sears, Member, Senate Appropriations Committee
Representative Patricia O'Donnell, Member, House Appropriations Committee